



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF E-S- INC.

DATE: JAN. 19, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of software development and testing services, seeks to employ the Beneficiary as a senior software engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This category allows a U.S. business to sponsor a professional with an advanced degree or its equivalent for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the Beneficiary's possession of the minimum education required for the offered position.

On appeal, the Petitioner asserts that the Director misinterpreted and disregarded evidence regarding the Beneficiary's educational qualifications.

Upon *de novo* review, we will dismiss the appeal.

## I. LAW AND ANALYSIS

### A. The Employment-Based Immigration Process

Employment-based immigration is generally a three-step process. First, a prospective U.S. employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification (labor certification), from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, the employer files Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

By approving the labor certification in this case, the DOL certified that U.S. workers are not able, willing, qualified, and available for the offered position of lead software engineer. See section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the Beneficiary's employment in the position will not hurt the wages and working conditions of U.S. workers with similar jobs. See section 212(a)(5)(A)(i)(II).

In these proceedings, we must determine whether the Beneficiary meets the requirements of the offered position certified by the DOL. We must also determine whether the Beneficiary qualifies for the requested immigrant classification. See, e.g., *Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "makes its own determination of the alien's entitlement to [the requested] preference status").<sup>1</sup>

#### B. The Beneficiary's Possession of the Education Required by the Labor Certification

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. § 103.2(b)(1), (12); see also *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).<sup>2</sup> In evaluating a beneficiary's qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. See *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

The labor certification states the minimum requirements of the offered position of senior software engineer as a U.S. master's degree or a foreign equivalent degree in computer science, applied mathematics, or computer information systems. The Petitioner indicated on the labor certification that it will not accept an alternate combination of education and experience. The labor certification also requires the following specific skills: Drupal, PHP5, JavaScript, Sass, Node.JS, MySQL, PHPUnit, and MongoDB.<sup>3</sup>

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<sup>1</sup> Here, the Petitioner has requested advanced degree professional classification. In order to be eligible for advanced for this classification, the Beneficiary must possess an advanced degree. The term "advanced degree" means "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2).

<sup>2</sup> In this case, the petition's priority date is November 20, 2015. This is the date the DOL received the labor certification application for processing. See 8 C.F.R. § 204.5(d).

<sup>3</sup> The record does not establish that the Beneficiary possessed these specific computer skills as of the priority date. In any future proceedings, the Petitioner must establish that the Petitioner had these specific skills as of the November 20, 2015, priority date.

The labor certification states that the Beneficiary possesses a master's degree in computer science from [REDACTED] in [REDACTED] Belarus, completed in 2012.

The record contains the Beneficiary's diploma of higher education with a specialization in software delivery for information technology and a qualification of software engineer, issued on [REDACTED] 2012, by the [REDACTED] together with his diploma supplement and English translations of both documents.<sup>4</sup>

The Petitioner submitted expert opinions regarding the Beneficiary's foreign educational credentials, including the following materials:

- Evaluation from [REDACTED] which equates the Beneficiary's five years of education at [REDACTED] to a bachelor of science in computer science and a master of science degree in computer science from an institution of postsecondary education in the United States.
- Evaluation from [REDACTED] which equates the Beneficiary's education at [REDACTED] to a bachelor of science in computer science and a master of science degree in computer science from a regionally accredited college or university in the United States.

[REDACTED] states that the Beneficiary earned the equivalent of 668 credits, which "is in excess of the 160 that commonly represent a US master's degree." He states that the number of credits is derived from 10,034 "transcribed classroom hours" and that he used the "Carnegie Unit" as the measure of academic credit in his calculation.<sup>5</sup> However, according to the Carnegie Foundation, the Carnegie Unit does not apply to higher education.<sup>6</sup> Therefore, it is not a useful measurement of the Beneficiary's education at [REDACTED].<sup>7</sup> Further, [REDACTED] evaluation does not assign credits for individual courses, and the diploma supplement does not specify how many credits the Beneficiary received for each course (with the exception of two courses totaling 14 credits). Moreover, the evaluation assumes that the hours earned by the Beneficiary were solely "transcribed classroom hours," but the diploma supplement does not indicate that the hours were solely classroom hours.

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<sup>4</sup> The supplement does not indicate how many credits were issued for each individual course (with the exception of two courses totaling 14 credits) or when the courses were taken, or break down the number of classroom/lecture hours or outside study hours (if any) for each course.

<sup>5</sup> The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center. See The Carnegie Foundation for the Advancement of Teaching, <https://www.carnegiefoundation.org/who-we-are/foundation-history/> (last visited Jan. 16, 2018).

<sup>6</sup> The Carnegie Foundation for the Advancement of Teaching, *The Carnegie Unit: What is it?*, <http://system.suny.edu/media/suny/content-assets/documents/faculty-senate/ugrad/TheCarnegieUnit.pdf> (last visited Jan. 16, 2018).

<sup>7</sup> [REDACTED] cites several website sources for the proposition that the Carnegie Unit applies to higher education. Of the website links provided, none are currently valid.

The [REDACTED] evaluation lists the courses taken by the Beneficiary, his grades earned, and the “credits” awarded for each class. The evaluation indicates that the Beneficiary earned a total of 668 credits, but it does not indicate how those credits were calculated.<sup>8</sup> Further, the evaluation does not equate the Beneficiary’s credits to credits issued by an accredited institution in the United States. The deficiencies in the two evaluations submitted by the Petitioner reduce their credibility in these proceedings.<sup>9</sup>

The Director sent a notice of intent to deny to the Petitioner, advising that USCIS had consulted the Electronic Database for Global Education (EDGE), an online database created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). Federal courts have found EDGE to be a reliable, peer-reviewed source of foreign educational equivalencies. *See, e.g., Viraj, LLC v. U.S. Att’y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (holding that USCIS may discount submitted opinion letters and educational evaluations submitted if they differ from reports in EDGE, which is “a respected source of information”). According to EDGE, the five-year diploma of higher education from Belarus is comparable to a U.S. bachelor’s degree.<sup>10</sup>

The Petitioner submitted a report from EDGE for a [REDACTED] diploma of specialist, which states that this credential is awarded after five or six years of university studies, and is comparable to a U.S. master’s degree. However, the Beneficiary’s five-year diploma is identified as a diploma of higher education, not as a diploma of specialist. Further, EDGE no longer includes a separate entry for a diploma of specialist. Rather, EDGE equates a Belarusian diploma of higher education, reflecting four or five years of university studies, to a U.S. bachelor’s degree. The updated report states that a diploma of higher education may follow not only four years of university study, but also five. The updated report also states: “The Diploma of Higher Education is also often referred to, and sometimes written as, Diploma of Specialist.” Thus, EDGE’s updated report on the Belarusian diploma of higher education appears to describe the Beneficiary’s diploma. Further, we reached out to the EDGE Admin Group with respect to the updated entry, and they indicated that: “The consensus of the IESC [International Education Standards Council] then [prior to the update] and now is that this is a first degree comparable to a US bachelor’s degree.” The IESC is responsible for vetting the credentials listed in EDGE.<sup>11</sup>

On appeal, the Petitioner asserts that we improperly relied on the current EDGE report and disregarded the evaluations that it submitted. Contrary to the Petitioner’s assertion, however, we do not find the materials it submitted to be authoritative. We may reject or give less evidentiary weight to expert opinions that conflict with evidence of record or that are “in any way questionable.”

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<sup>8</sup> It appears that the credits are based on the Carnegie Unit standard used by [REDACTED] (15 classroom hours equals one semester credit hour), although the evaluation does not specifically state that it used the Carnegie Unit.

<sup>9</sup> *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

<sup>10</sup> AACRAO EDGE, <http://edge.aacrao.org/country/credential/diploma-of-higher-education-2?cid=single> (last visited Jan. 16, 2018).

<sup>11</sup> AACRAO, <http://www4.aacrao.org/committees/?committee=IESC> (last visited Jan. 16, 2018).

*Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Here, USCIS did not err in consulting current EDGE information due to the deficiencies in the evaluations submitted by the Petitioner.<sup>12</sup>

A petitioner must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what it claims is “more likely than not” or “probably” true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In this case, the Petitioner has not submitted credible evidence that establishes by a preponderance of the evidence that the Beneficiary's diploma of higher education with a specialization in software delivery for information technology from the Belarusian State University of Informatics and Radioelectronics is the foreign equivalent of a U.S. master's degree in computer science, applied mathematics, or computer information systems as required by the labor certification.

Finally, the Petitioner references minutes from two American Immigration Lawyers Association (AILA) conferences with USCIS, and submits on appeal an excerpt from the AILA website regarding a 1995 memorandum from Louis Crocetti Jr., Associate Commissioner, legacy INS Office of Examinations, regarding H-1B nonimmigrant petitions.<sup>13</sup> However, unpublished agency decisions and legal opinions are not binding, even when they are published in private publications or widely circulated. *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd*, 273 F.3d 874 (9th Cir. 2001).

Based on the foregoing, we find that the record does not establish the Beneficiary's possession of the minimum education required for the offered position as specified on the labor certification.

### C. Eligibility for Advanced Degree Professional Classification

Although not discussed by the Director, the record also does not establish that the Beneficiary qualifies for classification as an advanced degree professional. A beneficiary of a petition in the requested classification must also possess an advanced degree or its equivalent. Section

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<sup>12</sup> In *Confluence Int'l, Inc. v. Holder*, No. 08-2665 (DSD/JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009), the court determined that we provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D.Mich. Aug. 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign “baccalaureate” and foreign “Master's” degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, No. 09-13605, 2010 WL 3325442 (E.D.Mich. Aug. 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

<sup>13</sup> See Memorandum from Louis Crocetti Jr., Associate Commissioner, Office of Examinations, INS, *Supporting Documentation for H-1B Petitions*, HQ 214h-C (November 13, 1995).

203(b)(2)(A) of the Act; 8 C.F.R. § 204.5(k)(3)(i). The term “advanced degree” means “any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.” 8 C.F.R. § 204.5(k)(2). As discussed above, the Petitioner has not demonstrated that the Beneficiary has the equivalent of a U.S. master’s degree. Further, although the record establishes that the Beneficiary has the equivalent of a U.S. bachelor’s degree, it does not demonstrate the Beneficiary’s possession of the five years of post-baccalaureate experience needed to qualify as an advanced degree professional.

## II. CONCLUSION

The record does not establish the Beneficiary’s possession of the minimum education required for the offered position as specified on the labor certification. Nor does the record demonstrate that the Beneficiary is eligible for the requested classification. We will therefore affirm the Director’s decision.

**ORDER:** The appeal is dismissed.

Cite as *Matter of E-S- Inc.*, ID# 558002 (AAO Jan. 19, 2018)